

(1984) 09 RAJ CK 0027

In the Rajasthan High Court

Case No : Civil Writ Petition No's. 1160 and 1217 of 1976

Jagannath and Bhojraj

APPELLANT

Vs

The Sub-divisional Officer and Others

RESPONDENT

Date of Decision : 28-09-1984

Acts Referred:

Rajasthan Tenancy (Fixation of Ceiling of Land) Government Rules, 1963 — Rule 17(4)

Citation : (1985) RLW 106 : (1985) 1 WLN 21

Hon'ble Judges : Milap Chand Jain, J

Bench : Single Bench

Final Decision : Allowed

Judgement

M.C. Jain, J.—The aforesaid writ petitions involve a common question of law, so they can conveniently be disposed of by this common order. In both the writ petitions, minor co-parceners share in the ancestral land has not been excluded from the "family" unit and their share in the land has been clubbed with the land of their father.

2. In the writ petition filed by the petitioner Jagannath, the facts are that the land is an ancestral one. A suit for partition was filed in March 1976 and it was decreed on June 13, 1976. The land was divided in three shares between Jagannath and his two sons viz. Ramswroop (major) and Hemraj (minor). In the Ceiling proceedings, Ramswroop's share was excluded but Hemraj's share was clubbed with the land of his father Jagannath and on that basis, the Sub-divisional Officer, after leaving 30 Standard Acres of land ordered to resume 53.4) Standard Acres by his order dated February 8, 1973 (Anx. 3). The petitioner Jagannath was unsuccessful in his appeal before the Revenue Appellate Authority, which was decided on June 18, 1975(Anx. 4) The learned Revenue Appellate Authority in its order found that it has not been proved that Hemraj is cultivating his land separately from his father and is not dependent on his father. The revision petition was preferred before the Board of Revenue. The Board of Revenue, however, adverted to Rule 17(4) of the Rajasthan Tenancy

(Fixation of Ceiling of Land) Government Rules, 1963 (for short "the Rules") and after referring to the said rule, observed that even supposing Hemraj's share in his father's property could be notionally calculated because he is a member of the Joint Hindu Family and has antecedent title in it from his birth, the property being ancestral, it cannot be excluded for the purposes of Ceiling. The learned Member of the Board of Revenue further observed-"thus, even if Hemraj's share in his father's property can be notionally worked out, it shall have to be clubbed again with his father's share for purposes of ceiling because he being minor was dependent upon his father and thus included in his family as defined by Section 30-E". Taking this view, the revision petition was dismissed.

3. In Bhojraj's case, the Sub-divisional Officer after remand of the case, ordered to resume 41.18 Standard Acres by his order dated February 20, 1976 (Anx. 1). The share of the land of minor son Hemraj, aged 12 years was clubbed with the land of his father. The Revenue Appellate Authority by its order dated April 29, 1976 (Anx. 5) dismissed the appeal of Bhojraj holding that Hemraj was aged 12 years on 1-4-65 and so, the order of the Sub-divisional Officer is proper. A revision petition was preferred before the Board of Revenue but the same view was taken and the revision petition was dismissed by its order dated June 8, 1976 (Anx. 6).

4. On behalf of the petitioners, their learned Counsel Mr. G.K. Garg submitted that the minor sons are entitled to their shares in the ancestral land. Under Sub-rule (4) of Rule 17 of the Rajasthan Tenancy (Fixation of Ceiling of Land) Government Rules, 1963, their notional share has to be taken into consideration and on that basis, it should be considered as to whether the minors are dependent or not on their father. In view of the extent of their holding, it is not found that they are dependent on their father. If it is sufficient to maintain themselves, then they cannot be said to be dependent on their father and their share is not liable to be clubbed together with the land of their father. Mr. Garg, learned Counsel for the petitioners submitted that the petitioner's case from the very beginning was that the land has been partitioned and the minors have definite shares in the land, so, their land cannot be clubbed with the land of the petitioner. The minors have been cultivating their land. The Ceiling Authorities, particularly, the Sub-divisional Officer and the Board of Revenue did not take into consideration this aspect of the case and proceeded to club the land of the minors with the land of their father, simply on the basis of minority. Thus, the Ceiling Authorities have proceeded on an erroneous view of law. Under the definition of the word "Family" according to the learned Counsel, only those children and grand-children would be considered to be the members of the family, who are dependents and those, who are not dependents upon their parents, would not be considered to be the members of the family for the purposes of Ceiling under the Old Ceiling Law.

5. Mr. Garg, learned Counsel for the petitioners urged that in both the cases, minors had sufficient share in the land and could maintain themselves solely on

their share of the land. That finding should have been reached by the Ceiling Authorities that they are not dependent on their father, so, according to the learned Counsel, the orders of the Ceiling Authorities are not liable to be quashed and minors should be considered to hold a separate unit and their share of the land is liable to be clubbed with the land of the petitioners.

6. Mr. N.L. Pareek, learned Additional Government Advocate, on the other hand, submitted that the petitioners have not put forward this case either before the Sub-divisional Officer or before the higher forum that the minors are not dependent on their father and they have not led any evidence to prove that they are not dependent on their father, in view of the fact that they are possessed of definite shares in the ancestral land and the land has been partitioned. In the absence of such a proof, according to Mr. Pareek, the Ceiling Authorities were right in clubbing the land of minors with their father. Reference was made to a decision of this Court in *Ram Ratan v. State of Rajasthan* 1982 R.L.R. 939.

7. I have given my serious and anxious consideration to the rival contentions advanced by the learned Counsel for the parties. The statutory definition of the word "family" given in Sec. 30-E of the Act, is to the effect that "family" shall mean a family consisting of a husband and wife, their children and grand-children being dependant on them and the widowed mother of the petitioner, so dependent. Children and grand-children can be treated as members of the family, only if they are dependent on their parents and not otherwise. In the statutory definition, it would appear that minority and majority has not been taken into consideration. What has been taken into consideration is the dependency of the children and grand-children on their parents. The dependency is a question of fact and has relation to the question of maintenance of the children and grand-children, those who can maintain themselves, are not dependent on their parents, whether they are minor or major and would not be considered to be members of the family. In order to exclude the children and grand children from the concept of the word "family" as defined in Section 30-B(a), it has to be averred that they are not dependent on their father and it has to be established by satisfactory credible evidence that they are not dependent on their father. It is only on the basis of such evidence, if adduced, a finding can be reached whether the children and grand-children are dependent on their father or not.

8. It may be stated that a family may be having ancestral land or may not be having ancestral land. In case it has an ancestral land, then the co-parceners will have a share in the ancestral land by birth. Even a minor co-parcener may have sufficient share, so as to maintain himself and in that situation it can be said that he can maintain himself out of his own property fallen to his share and then, it can be said that he is not dependent on his father. But when he has not share in the ancestral land but his share is insufficient to maintain himself then he could be defendant on his father and share of the land would be considered along with the land held by his father for the purpose of computing the ceiling area of the

family as a unit. As to whether the coparceners can be considered to be dependents on the father, reference may be made to some observations of the Supreme Court. In *The Commissioner of Expenditure-tax, Gujarat v. Darshan Swendra Parekh* AIR 1966 S.C. 1125 at the end of para 10, their Lordships observed:

No co-parcener in a Hindu Undivided family is a dependent if the family he is an owner of the entire property of the family in common with the other coparceners. His rights arise on birth into the family, and so long as the family remains joint, his interest in the property is no a bit less than the interest of any other co-parcener.

The above referred case was under the Expenditure-tax Act and a statutory definition was given of the word "dependent" in Section 2(g)(ii)(b). The decision has turned on the statutory definition and the interpretation of Section 4, 5 and 6 with which I am not concerned in the present petitions but a general observation with regard to the dependency of the co-parcener has been made, which is extracted above.

9. It is also noteworthy that the definition of the word "family" u/s 30-B(a) should be read with sub-rule (4) of Rule 17 of the Rules. Sub-rule (4) of Rule 17, reads as under:

17. Lands held by Un-divided family, Society etc.

(1)

(2)

(3)

(4) The share of a member of a family or of an individual person in the land held by a Hindu Undivided Family or the share of a family or of an individual in the land held by a firm, society or association of individual (whether incorporated or not) or by a company shall be deemed to be the extent of land which in case such share is held on the appointed date would have been allotted to such a member, person or family had such land been partitioned or divided, as the case may be, on such date; or which, in case such share is acquired in any manner what so ever after the appointed date would be allotted to such member, person or family if a partition or division were to take place on the date of determination of the ceiling area.

It would appear from the above provision that the extent of the land of a coparcener would be deemed to be that share, which would have been allotted to him on the appointed date and it is on that basis the question of "dependency" can be examined. Looking to the extent of the share of the co-parcener, factually it could be found as to whether the co-parcener irrespective of he being minor or major, is dependent on his parents. In connection with *Ram Ratan's* case (*supra*) relied upon by Mr. Pareek, it may be mentioned that Sub-rule (4) of Rule 17 of

the Rules was not taken into consideration and it appears that in that case. Mahaveer was held to be a minor on April 1, 1966 and a question of dependency was impliedly taken to be found against the minor Mahaveer. The word "dependency" has also been elaborately considered by Shrimal, J. In para 20 Shrimal, J. then concluded that an artificial definition of the word "family" in Section 30-B, intended that the dependent children, who are infants and major, who can not contact or maintain independently should be clubbed together with their parents and should be considered as one family unit. Sidhu, J, as well in Para 33 observed that, to find out whether a child or a grand-child in a member of such a family or not, one need not be concerned with the question whether the child or grand-child in minor or major, for in either case, he would be a member of the family if he is dependent on his parents or grand-parents. It would appear from these observations of the learned Judges that the dependency is a material circumstance determining the question as to whether the children or grand-children would be considered to be members of the family or would be excluded by treating them as independent units. The view taken in this judgment is based on the definition of the word "family" and on facts, it was found that Mahaveer would be considered to be a member of the family and this contention has been repelled that the sons are entitled to be considered as independent units or families for the purposes of determination of ceiling area.

10. In the cases before me, Undoubtedly, it is true that specifically the petitioners have not come with the case that the minor sons are not dependent on their parents & are dependent on their respective shares in the ancestral land, which on division had fallen to their possession. There should have been such a specific case and the petitioner should have also proved that specific case. But when the petitioners have case with a definite and a specific case, that the minors have specific shares in the ancestral land and partitions had taken place and from the extent of their share holding, therefore, the petitioners intended to put up this case that the minors are not dependent on their father. The purport of the pleading of the petitioners' case has to be looked and not its form. In Jagannath's case, the Revenue Appellate Authority had adverted to this aspect as to whether the minor Hemraj is maintaining himself independently of his father, out of his share of the land & the Revenue Appellate Authority found that such a case is not proved. In both the cases, the Board of Revenue proceeded to dispose of the matter on the basis that the sons being minors are dependent on their father and so their share of the land has to be clubbed with their father. On the basis of minority, dependency can be inferred. This approach to the question, in my opinion, appears to be erroneous in law. As already stated above, a minor may or may not be dependent on his father. When the matter has not been viewed from the correct legal perspective by the Ceiling Authorities, then their orders cannot be sustained and the orders deserve to be quashed and it would be proper that the Sub-divisional Officer may hold an enquiry into the question of dependency of the minors and thereafter decide as to whether their land can be clubbed with the land of their father or their land has to be excluded and dealt

with separately.

11. Accordingly, both the writ petitions are allowed and the three orders of the Ceiling Authorities are quashed. In both the cases, the Sub-divisional Officer is directed to decide the petitioners' case after holding the enquiry into the question of dependency of the minor sons of the petitioners, in the light of the observations made above.

12. The parties are left to bear their own costs.